

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No. 1296/94

Date of Decision 28/3/96

V.D.Choudhri Petitioner

Shri G.K.Masand Advocate for the Petitioner.

Versus

Union of India & 2 Ors. Respondent

Shri Suresh Kumar for Advocate for the Respondents.

Shri M.I.Setha

Coram:

The Hon'ble Mr. M.R.Kolhatkar, Member (A).

The Hon'ble Mr.

1. To be referred to the Reporter or not? ✓
2. Whether it needs to be circulated to other X
Benches of the Tribunal?

abp.

M.R.Kolhatkar
(M. R. KOLHATKAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6,PRESCOT ROAD, 4TH FLOOR.,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO.1296/94.

DATED THE 28TH DAY OF MARCH,1996.

CORAM : Hon'ble Shri M.R.Kolhatkar, Member (A).

V.D.Chaudhri
(Advocate by Shri G.K.Masand)

... Applicant

v/s.

1. Union of India through
the Secretary in the
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. Collector of Central Excise,
Bombay - II,
Piramal Chambers,
Lalbaug, Bombay - 400 012.
3. Pay & Accounts Officer,
Central Excise, Bombay-II,
6th Floor, Piramal Chambers,
Lalbaug, Bombay - 400 012.
(Advocate by Shri Suresh Kumar
for Shri M.I.Sethna)

... Respondents.

ORDER (ORAL)

Per Shri M.R.Kolhatkar, Member(A)

Heard Shri G.K.Masand for applicant and Shri Suresh
Kumar for respondents.

2. In this case, the applicant who ~~superannuated on~~
31.10.1994 is claiming the relief of payment to the applicant
of the terminal benefits including Gratuity, Commuted
value of Pension and leave encashment salary due alongwith
21% rate of interest. Since by an interim order dt. 30/1/95,
leave encashment was directed to be paid, that relief does
not survive. Here we are required to consider whether the
remaining relief can be granted in the context of the
following facts.

3. The applicant joined the Collectorate of Central
Excise at Bombay as Assistant Collector from 13/9/94. On
or about 21/10/94, i.e. 10 days prior to superannuation the

Collectorate received a communication dt. 21/10/94 that an enquiry under rule 14 of the CCS (CCA) Rules, 1965 for major penalty was being initiated against the applicant. The Charge sheet was sent to the Collectorate. The background of this is that advice of C.V.C. in this regard was dated 2/3/94. The draft charge-sheet in respect of ~~the~~ applicant who was a Group 'A' Officer required approval of the Competent Authority, in this case the President of India. The Counsel for the respondents states that a decision in this regard was taken on 17/2/95 i.e. after the superannuation of the applicant. It is also contended that the provisional pension in terms of rule 69 of the CCS (Pension) Rules has also been sanctioned in favour of the applicant. The contention of the respondents is that the applicant was a Group 'A' Gazetted Officer, the formal charge-sheet is required to be issued by the President of India which takes some time but a draft charge-sheet was already ready. The point of the contention is that departmental proceedings were contemplated against the applicant and, therefore, the department was within its right to withhold Gratuity and Commuted Value of Pension.

4. The Contention of the Counsel for the applicant is that the action of the department must stand the test of being within the frame work of rule 9 of CCS Pension rules. As the rule is material for adjudication of the matter, the same is reproduced below:-

"Rule-9 - Right of President to withhold or withdraw Pension.

"9(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period. and of ordering a recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission

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shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.)

- (2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

- (b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-
- (i) shall not be instituted save with the sanction of the President.
 - (ii) shall not be in respect of any event which took place more than four years before such institution, and
 - (iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) "Deleted".

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in (Rule 69) shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but order recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule,-

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) judicial proceedings shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date on which the complaint or report of

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a police officer, of which the Magistrate takes cognisance, is made, and

(ii) in the case of civil proceedings, on the date ~~the~~ complaint is presented in the court"

5. It will be seen from the above that the President has right to withhold Pension, if in any departmental or judicial proceedings., the pensioner is found guilty of grave misconduct or negligence during the period of service. Rule 9(2) (a) creates the fiction of departmental proceedings referred under sub rule-1 being proceedings under this rule even after final retirement of the Government servant and gives authority to Government to continue the same. Rule-4 states that in the case of the Government servant who has retired against whom disciplinary proceedings are instituted or continued under 9(2), provisional pension shall be sanctioned.

6. Rule 9(6) defines the date of institution of departmental proceedings for the purpose of the rule as the date on which the statement of charges is issued to the Government servant or pensioners or if the Government servant has been placed under suspension from an earlier date on such date of suspension.

7. The case of Union of India v/s. K.V.Jankirama AIR 1991 S.C. 2010 and Delhi Development Authority v/s. H.C.Khurana AIR 1993 S.C. 1488 have been cited before me in aid of the determination of the ^{material} date, but they have no applicability for the purpose in hand because those cases relate to promotional matters and interpreted the term "the pendency of the Disciplinary Proceedings" and not to the institution of Disciplinary Proceedings. The term pendency was not defined and it was held in Khurana's case that the date of despatch of charge sheet would be relevant for determining the date of pendency. In the instant case, I am required to define the term ^m institution of departmental proceedings. My work has been

simplified by the rule-9(6) of the Pension rules incorporating the definition. It is clear that unless the charge sheet is issued to the Government employee or if the Government employee has been placed under suspension prior to the date of retirement, disciplinary proceedings will not be deemed to be instituted prior to date of retirement and therefore they cannot be continued after the date of superannuation.

8. There is no dispute that no such disciplinary proceedings have been instituted and the decision to proceed against the applicant was taken well after the date of superannuation viz. 17/2/95.

9. In my view, therefore, the action taken by the department in sanctioning only provisional pension in favour of applicant in terms of rule - 69 and withholding the other retirement benefits is not warranted by the rule-9, which is the only relevant to rule for this purpose.

10. The Learned Counsel for the applicant has invited my attention to the case law on the point of when the Government servant can be said to have effectively retired vide State of Punjab v/s. Khemi Ram, AIR 1970 S.C. 214.

In para-11 it is stated

"There can be no doubt that if disciplinary action is sought to be taken against a Government servant it must be done before he retires as provided by the said rule. If a disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the Government is to pass an order of suspension and refuse to permit the concerned public servant to retire and retain him in service till such enquiry is completed and a final order is passed therein."

11. Counsel for the applicant next relies on the case of D.J.Shelat v/s. State of Gujarat and Ors in AIR 1978 S.C. 1109. This is a case which relates to BCS (Conduct Discipline and Appeal) Rules., decided by the Hon. Supreme

Court and related to compulsory retirement under relevant Bombay rule corresponding to ~~FR-56~~.

In para-11 of the judgement, the Supreme Court has made the following observations:-

"In ~~the~~ view we have taken that the appointing authority has no jurisdiction to take disciplinary proceedings against a Government servant who had effectively retired, the question as to whether the High Court was right in holding that the disciplinary authorities had sufficient grounds for dismissing the appellant does not arise."

12. In the light of the discussion, I am compelled to hold that on 31/10/94, the Disciplinary Proceedings were not instituted against the applicant nor were they continued under rule 9(2) of the CCS Pension rules. Therefore, the action of the department in only paying provisional pension to the applicant and withholding ~~remaining~~ retirement benefits by resorting to rule 9(4) and rule 69 of the CCS Pension rules is clearly illegal and is therefore required to be interfered with. In the result, the OA succeeds and the department is directed to pay to the applicant all the terminal benefits including gratuity and Commuted value of Pension. So far as the interest is concerned, ~~we~~ direct that the same may be paid to the applicant, 3 months from the date of retirement i.e. from 1/2/95 ~~with~~ at 12% as the delay is not treated as culpable. There will be no orders as to costs. The payments to be made within two months of communication of this order.

M.R. Kolhatkar

(M. R. KOLHATKAR)
MEMBER (A)

abp.